**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**
**AND**
**HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY**

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**WRIT PETITION Nos. 20470 AND 20471 OF 2006**

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**WRIT PETITION Nos.20470 of 2006**

Between:

Amway India Enterprises,
(a Private Company with unlimited liability),
Through Mr.Yoginder Singh,
Authorised Signatory.
And another

... Petitioners

AND

Union of India, rep., by
Secretary, Ministry of Home,
New Delhi
and others.

... Respondents

**: ORDER :**

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Counsel for the petitioners : Shri B.Adinarayana Rao
Shri C.Sudesh Anand

Counsel for respondents 1 & 2: Shri A.Rajashekar Reddy
Assistant Solicitor General.

Counsel for respondents 3 to 6: Advocate General

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**Writ Petition No.20471 of 2006:**

Between

K.Rajashekar Reddy
And others. ...Petitioners.

And

Union of India, rep by
Secretary, Ministry of Home,
New Delhi
And others.

... Respondents.

Counsel for the petitioners : Shri S.R. Ashok for
Shri S.Niranjan Reddy

Counsel for respondents 1 & 2: Shri A.Rajashekar Reddy
Assistant Solicitor General.

Counsel for respondents 3 to 6: Advocate General for
Sri J. Sudheer

Counsel for respondent No.7 : Sri B.Adinarayana Rao for
Sri C. Sudesh Anand

**Dated: 19 .07.2007**

**Per C.V.Nagarjuna Reddy, J**

Whether the business activities being carried on by the petitioners attract the provisions of Prize Chits and Money Circulation Schemes (Banning) Act 1978 (for short "the Act") and whether the action of respondents 3 to 6 in interfering with the activities of the petitioners by invoking the provisions of the Act is arbitrary, are the questions which fall for consideration in these two writ petitions.

**The resume of facts in W.P.Nos.20470 and 20471 of 2006:**

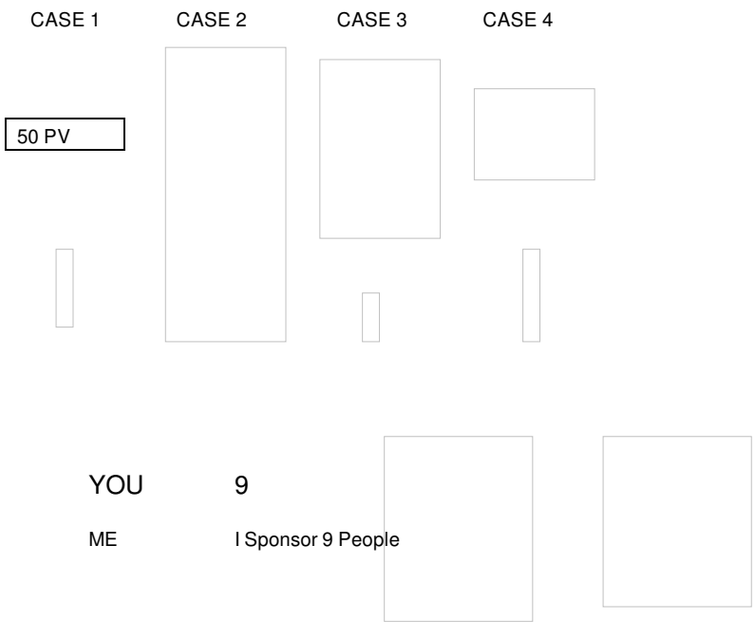
Petitioner No.1 is a private company with unlimited liability registered under the Companies Act 1956 having its registered office at C-3, Quatab Institutional Area, New Delhi. It is the wholly owned subsidiary of Amway Corporation, United States of America and is engaged in manufacture/marketing of its various products through a network of distributors. Petitioner No.2 in W.P.No.20470 of 2006 and all the three petitioners in W.P.No.20471 of 2006 are distributors of the 1st petitioner. The 1st petitioner approached Government of India, Ministry of Industry, Department of Industrial Development with an application dated 2.6.1994 to convey approval of Government of India for setting up a wholly owned subsidiary of Amway Corporation of United States of America in India for the purpose of establishing and developing a direct selling business of products. The Government of India, Ministry of Industry, Department of Industrial Development, Secretariat for Industrial Approval, Foreign Collaboration-II Section conveyed to the Amway Corporation, its approval of the said proposal, namely, to set up the wholly owned subsidiary in India, to establish and develop a direct selling business of products which shall be sourced from local independent Indian manufacturers particularly small scale units by providing technology support to products of international standard, vide its letter dated 26.8.1994. The approval was subject to certain conditions which inter alia include the condition that the proposed Indian subsidiary does not envisage any manufacture by itself and that if it decides to take up the manufacturing also, it shall obtain prior approval from Government of India as per the prescribed policy and procedure and a further condition that the approval is made a part of the foreign collaboration agreement to be executed between the Amway Corporation of USA and the Indian Company and that the approval is valid for a period of two years from the date of issue within which period Amway Corporation was required to file agreement with the Reserve Bank of India/Authorised Foreign Exchange dealer. Condition No.13 of the approval stipulated that the company shall not

manufacture the items reserved in the small scale sector without prior approval of the Government.

The conditions contained in the original approval dated 26.8.1994 were amended from time to time on the applications made either by Amway Corporation, USA or by the 1st petitioner on issues such as foreign equity participation, rescheduling of fresh marketing period etc. A significant amendment to the initial approval was the amendment dated 4.8.2004 whereby the 1st petitioner was permitted to set up its own units for manufacturing a number of personal care and cosmetic products, home care range of products, nutrition and wellness range of products and surfactants. By the same proceedings the Government of India permitted the 1st petitioner to import products such as fragrance, deodorants, shampoos, conditioners, cleansers etc.

One A.V.S.Satyanarayana, Director of Altus Systems Private Limited, Basheerbagh, Hyderabad (Respondent No.8 in W.P.No.20471 of 2006) lodged a complaint in the CID Police Station, Hyderabad which was registered as FIR No.10 of 2006 dated 24.9.1996. In his complaint, Mr. A.V.S.Satyanarayana stated that he was approached by Smt.M.Padmavathi and Sri M.Ramu introducing themselves as Amway Distributors; that they informed Mr.Satyanarayana that if he joins the scheme by paying Rs.4,000/- and sponsor 5 to 6 persons per month into the scheme he will get money not only through sale of products but also with the efforts of downline distributors; that the said two persons by visiting his house several times tried to induce him to join in the scheme; unable to bear the mental agony and harassment caused by the said two persons, he joined the scheme on 29.8.2005 by paying Rs.5,200/- to the 1st petitioner; that the said Padmavathi and Ramu informed him that if he introduces new members and sell the products to them, he will become a silver producer in lessthan four months time. He further mentioned that he was explained about the money circulation scheme and product selling scheme. For the sake of convenient reference, the complaint of Mr. A.V.S. Satyanarayana is reproduced below:

> " One of the schemes which involves enrolment of further members is called as 9-6-3. Under this scheme, I have to enroll 9 members first and then those members will enroll 6 members each and further each such person will enroll three members. Thus under me there will be 225 members and from whose sales, I was told that I will be earning lakhs & lakhs of rupees without doing anything. They also further told that if I enroll 2 members per month then at the end of 9 months, there will be 512 persons under me and I will be getting 10,000 PV (4,00,000 BV) and it is also called as 1 leg which is 21%. Thus the scheme I felt was nothing but a chain, where each one were asked to enroll further. The same is showing as per the below picture:




Total Chain will become as follows: 9+54+162+me = 226"

It is further stated in the complaint:

> " The Amway India Enterprises is luring the public including me to introduce new distributors by showing the bait in the name of commission on sale of products to make quick money. The Amway India Enterprises is instigating the distributors like Padmavathi and Ramu to join the new distributors to sell the products in a large way, which is causing mental agony. It is nothing but money circulation which is illegal and also cheated me on the premise that they will return the money and commission according to company Multi-level Scheme (pyramid). I came to know that Amway India Enterprises, Hyderabad opened its branches all over Andhra Pradesh and exploiting youth like me and their families for their further gains."

The CID police registered a case for the offences under Section 385 and 480 of the Indian Penal Code and Sections 4, 5, and 6 of the Act on 24.9.2006. Within three days of registration of the crime, the petitioners filed these two writ petitions for issue of a writ of Mandamus to declare that the provisions of the Act have no application to the scheme run by petitioner No.1 and to restrain the respondents from interfering with the business carried by the petitioners.

**Contentions:**

Sri B.Adinarayana Rao, assisted by Sri C.Sudesh Anand, appearing for the petitioners in W.P.No.20470 of 2006 contended that the 1st petitioner company has been carrying on its business activity in India with the approval of Government of India and that the Government of India had neither withdrawn the approval nor interdicted the petitioners' business activities which are being carried on in accordance with the approved scheme. He further submitted that the registration of criminal case by the CID police and their interference with the petitioners' business on the ground that it is hit by the provisions of the Act is highly illegal, arbitrary and unconstitutional. He argued that none of the ingredients of Section 2(c) of the Act exists in the business carried on by the petitioners as there is neither quick or easy money nor payments received by the promoter on promise of payment of money on the contingency relative or applicable to the enrollment of new members into the scheme. Learned counsel further argued that the registration of the crime and interference with the petitioners' business activities by the State and its authorities is patently illegal, highhanded, arbitrary and unauthorized. According to the learned counsel, the first petitioners' holding company, namely, Amway Corporation, USA is carrying on the direct selling business of products by avoiding middlemen (wholesale and retail traders) in more than 80 countries all over the world and that the petitioner which is incorporated as a wholly owned company of the Amway Corporation of USA has introduced the said method in India like many other companies and that since the money is payable on the basis of the skill and business turnover of the distributors, the prohibition contained in Section 3 of the Act is not attracted. In support of his contention, the learned counsel relied upon the judgment of the Supreme Court in **State of West Bengal Vs. Swapan Kumar Guha**[1]**.** The learned counsel while making copious reference to various portions of the said judgment explained the scheme under which the petitioners are carrying on business and submitted that the ratio laid down therein is squarely attracted to the cases on hand.

Sri S.R.Ashok, Senior Counsel appearing for the petitioners in W.P.No.20371 of 2006 supported the arguments of Sri B.Adinarayana Rao and submitted that the scheme under which the petitioners are carrying on the business is not comprehended by the provisions of Section 2(c) of the Act. He argued that no distributor will get any money merely on the enrollment of other members sponsored by him and that the money he gets depends upon marketing of products by himself and the other members whom he sponsored. The learned counsel further contended that there is no compulsion or coercion on the members to sponsor other members and that the scheme does not provide for payment of money on mere enrollment per se which alone attracts the definition of Section 2(c) of the Act. The scheme therefore, according to the learned counsel, cannot by any stretch of imagination be termed as "money circulation scheme" within the definition of Section 2(c) of the Act.

Per contra, learned Advocate General submitted that the business activity of the petitioners squarely falls within the definition of "money circulation scheme" and is, therefore, hit by the provisions of Section 3 of the Act. Learned Advocate General invited the Court's attention to brochure at Page-32 of the material papers filed in W.P.No.25749 of 2006 (a Public Interest Litigation filed by one of the alleged victims of the petitioners' business) to explain how a person on his becoming a member is credited with points value (PV) and on his sponsoring other distributors how he is benefited on their business volume (BV). The learned Advocate General referred to diagram contained in the said brochure and pointed out that the whole scheme is evolved in such a manner that a person who joins as distributor is required to enroll six persons and each of the six persons would enroll four persons who in turn would enroll three persons each and, in this manner, the strength of the entire group becomes 103. He further pointed out that the money the person at the top of the group is supposed to get according to the scheme includes the money which, the other 102 persons, who are directly or indirectly sponsored by the first member, pay either towards subscriptions (initial/renewal) or by selling products. The learned Advocate General argued that there are reciprocal promises involved in the scheme. He submitted that while the promoter gets money from the members as a consideration for promise made to pay them money on the happening of event or contingency relative or applicable to the enrollment of new members, the members earn easy or quick money in redemption of the promise so made by the promoter. He controverted the arguments of the learned counsel for the petitioners that there is no compulsion or coercion to sponsor the members. The learned Advocate General then argued that petitioner No.1 evolved a mechanism where introduction of new members is made so attractive and luring that every distributor strives for sponsoring others in order to earn more and more money consequent on the enrollment of new members. He also submitted that the scheme as is being implemented was not the one which was placed before the Government of India or the one which is pleaded in the writ petition.

In order to fortify his contention that easy/quick money is involved, the learned Advocate General referred to para-11 of the counter affidavit of the Deputy Superintendent of Police, Economic Offences Wing, CID, Hyderabad (Respondent No.6). It would be convenient to extract para-11 hereinbelow:

> " 11.**Easy/quick money and it being dependent on enrollment of members:**
>
> a. A substantial sum of Rs.1,800/- out of Rs.4,400/- is credited direct to the account of "Amway". It is stated on behalf of the company in the Writ Petition that it enrolled 4,50,000 distributors all over India. Taking this as correct, a sum of Rs.81,00,00,000/- (Rupees Eighty One Crore) is appropriated by the company at the time of enrollment of the members itself. This cannot but be stated "easy/quick money" got by it from the so called distributors/member de hors any service.
>
> b. The terms and conditions of "Distribution Renewal from", supplied by "Amway" shown as Annexure-3 read as follows:
>
> Condition No.3: "The distributorship agreement if not renewed by Amway shall stand terminated on 31 December or on expiry of one year from the date of distributorship, as the case may be."
>
> Condition No.12: "The Renewal of subscription fee including Block Renewal subscription fee is non-refundable."
>
> Condition No.14: "Renewal of subscription fee is mandatory to continue with business and maintain your position in line of sponsorship"
>
> Thus, from 4,50,000/- distributors the company would get a sum of Rs.45,00,00,000/- (rupees forty five crores) (4,50,000 x 995) per annum on completion of every year which can only be stated to be "easy/quick money" sans any service to the distributors/members.
>
> c. To enable him to get the so called commission @ 3% every month, the ABO has to distribute/purchase/sell products worth Rs.2,000/- of "Amway" every month or else he will not be eligible to get any commission or continue as member in the scheme. Thus, each member is forced/induced/lured to purchase the products worth Rs.2,000/- every month to keep his chance of getting commission alive. Thus, "Amway" would automatically get a business of the quantum of Rs.1080/- crores (4,50,000 x 2,000 x 12(months) ) per annum which would yield an astronomical profit and it cannot but be stated as "easy/quick money" without any service to the distributors/members irrespective of whether they sell the products or not, though the company may conveniently refer it as "turnover by sale of products".

The learned Advocate General also explained how the scheme ensures payment of money on any

event or contingency relative or applicable to the enrollment of members into the scheme. He submitted that a person who joins the scheme and becomes a distributor earns money in different ways. The learned Advocate General explained the mechanism of the scheme in the following manner:

1) Retail Profit Margin: On his becoming a member products are purchased or delivered to him. When he sells the product at a price not exceeding the MRP printed on the pack, he will get retail profit margin calculated as the difference between the distributor's price and the MRP printed on the pack.

2) Performance Based Incentive: He will get incentives by way of fixed business volume (BV) and point value (PV) upon achieving a minimum PV for the month, i.e., if he reaches the level of the sale of products by earning minimum PV of 100, he becomes entitled to receive additional incentives on a graded scale depending upon the PV achieved for the month. The percentage of incentives depends upon the percentage of PV and the incentive is paid at the relevant percentage on the BV. All this is explained from the 1st petitioner's scheme (Annexure-A at page-71 onwards in W.P.No.20470 of 2006).

3) On enrollment of other distributors sponsored by him, the sponsor distributor will get incentives under as many as 10 heads which are solely related to the PV and BV achievement of the sponsored distributors. The learned Advocate General referred to page-33 of the W.P.No.25749 of 2006 which contains the 1st petitioner's scheme wherein the various incentives which the existing member gets on completion of the sponsoring of the entire group comprising 103 members.

The learned Advocate General distinguished the judgment of the Supreme Court in **Swapan Kumar Guha (1 supra)**. He pointed out that after interpreting Section 2(c) of the Act, the Supreme Court held that the complaint lodged by the State in that case failed to satisfy the ingredients of the said provision and quashed the registration of criminal case and argued that the ratio of that judgment has no application to the facts of the present case in which the allegations contained in the First Information Report taken on their face value constitute an offence under the provisions of the Act.

Sri A.Rajasekhar Reddy, learned Assistant Solicitor General appearing for Union of India submitted that the scheme approved by the Government of India is different from the scheme which the 1st petitioner company is executing and, therefore, the approval given by the Government of India cannot be used as a shield by the petitioners for carrying unlawful business. He referred to the letters dated 31.3.2003 and 23.9.2003 addressed by the Secretary, Government of India, Ministry of Consumer Affairs and submitted that though in the first letter a reference was made to the Judgment in **Swapan kumar Guha (1 supra)** and the Secretary opined that the companies dealing with direct/ network/middlemen marketing do not fall within the provisions of the Act, later on, he clarified that the unlawful activities are prohibited in the Act. Shri Rajasekhar Reddy submitted that as per letter dated 29.3.2003, the pyramid structured marketing schemes fall within the provisions of the Act and the people running those schemes cannot claim the benefit of the approvals granted by the Government of India. The learned counsel further argued that having regard to the serious allegations which prima facie show that the petitioners are involved in money circulation prohibited by the Act, they cannot seek to interdict the investigation by the police and that the truth or otherwise of the allegations made in the criminal case should be allowed to be revealed and this Court cannot issue writ to stultify the investigation.

Mr.D.Sheshadri Naidu, who appeared for respondent No.8 in W.P.No.20471 of 2006 argued that the business being carried on by the petitioners attracts the definition of Section 2(c) of the Act. He submitted that the sale of product envisaged in the scheme is only a camouflage for the money circulation business. He referred to certain passages of G.P.Singh on Interpretation of Statutes and submitted that even though the scheme evolved by the 1st petitioner and being implemented does not overtly replicate a scheme

prohibited under the provisions of the Act, a dynamic interpretation is required to be given to the provisions of the Act in order to prevent social evil being perpetrated by the petitioners.

In his rejoinder, Shri B. Adinarayana Rao reiterated that the Government of India has not taken a specific stand that the business activity of petitioner No.1 is hit by the provisions of the Act. He submitted that the main ingredient of quick or easy money envisaged under Section 2(c) of the Act does not exist in the petitioners' scheme. He further submitted that the 1st petitioner has an annual business turnover of 700 crores and even assuming that all the 4,50,000 subscribers paid the annual renewal fees of Rs.995/-, the 1st petitioner gets only about Rs.40 crores and by no stretch of imagination it can be said that the 1st petitioner is getting quick or easy money on this count. He referred to the instance pertaining to Accused No.4 (Raja Naren) in Crime No.10 of 2006 narrated in the counter affidavit wherein it is stated that the said person became a diamond member of the 1st petitioner company in the month of August 2006 and that he has not purchased goods worth a single rupee, but still he has credited with points worth Rs.7,61,140/- during that year and submitted that even if these figures are correct, the provisions of Section 2(c) of the Act are not attracted because making of such a profit by a person is not forbidden by any law. The learned counsel submitted that the commission credited to a sponsor on the purchases made by the downline distributors is only one of the components of the payments received by the sponsor members. The learned counsel then submitted that even if the Court comes to the conclusion that Section 2 (c) is attracted in the case of the petitioners, they cannot be forced to close the business till the conclusion of the criminal proceedings and indiscriminate seizure of products being effected by the police should be declared illegal and nullified.

We have given serious thought to the respective arguments. However, before dealing with the same, we may notice the background in which the Act was enacted and the salient features thereof.

**Analysis:**

A study group constituted by the Reserve Bank of India made an in-depth examination of the provisions of Chapter-III-B of the Reserve Bank of India Act, 1934 and submitted its report with the recommendations that prize chits or money circulation scheme, by whatever name called, should be banned in the larger interest of public and suitable legislative measures should be undertaken. In order to implement these recommendations, the Parliament enacted Prize Chits and Money Circulation (Banning) Act 1978. Section 2 (c) of the Act defines money circulation scheme as:

> " "money circulation scheme" means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrollment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions"

Section 3 of the Act imposed a prohibition on promotion or conduct of any prize chit or money circulation scheme or enrollment as a member to any such chit or scheme or participation in it otherwise or receive or remit any money in pursuance of any chit or scheme. Section 4 of the Act postulates that whoever contravenes the provisions of Section 3 shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to Rs.5,000/- or with both. Proviso to Section 4 prescribed minimum sentence of imprisonment of one year and fine of Rs.1,000/- in the absence of special and adequate reasons to the contrary to be mentioned in the judgment. If a person in promotion or conduct of any prize chit involves himself in the acts enumerated in section 5 (a) to (f) of the Act, he shall be punishable with imprisonment for a term which may extend to three years or fine which may extend to Rs.3,000/- or both. A minimum sentence of one year and a fine of Rs.1,000/- is also prescribed in respect of those offences. Under Section 6 of the Act where an offence has been committed by a company every person who at the time of the commission of offence was incharge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the

offence. Section 7 of the Act empowers any police officer not below the rank of an officer in charge of a police station inter alia to enter, if necessary, by force any premises which he has reason to suspect or being used for purposes connected with the promotion or conduct of any prize chit or money circulation scheme in contravention of provisions of the Act, to take into custody and produce before any Judicial Magistrate all such persons against whom a complaint has been made etc., and to seize all things found in the said premises which are intended to be used or reasonably suspected to have been used in connection with any prize chit or money circulation scheme. Under Section 10 of the Act the offences are made cognizable.

In the light of the above, it has to be considered whether the business activity of the petitioners falls within the definition of money circulation scheme.

In **Swapan Kumar Guha (1 supra)** the Supreme Court made an in-depth analysis of Section 2(c) of the Act. A.N.Sen, J who rendered the leading judgment interpreted and analyzed the said provision as under:

> " (i) there must be a scheme;
> (ii) there must be members of the scheme;
> (iii) the scheme must be for the making of quick or easy money on any event or contingency relative or applicable to the enrollment of members into the scheme or there must be a scheme for the receipt of any money or valuable thing as the consideration for a promise to pay money on any event or contingency relative or applicable to the enrollment of members into the scheme;
> (iv) the event of contingency relative or applicable to the enrollment of members into the scheme will however not be in any way affected by the fact whether or not such money or or thing is derived from the entrance money of the members of such scheme or periodical subscription."

The learned Judge held that the words "on any event or contingency relative or applicable to the enrollments of members into the scheme whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscription" applies to, a) quick or easy money, and b) for the receipt of any money or valuable thing as consideration for promise to pay money and not merely to the latter.

Chandrachud, CJ while agreeing with A.N.Sen, J held that any and every activity for the making of quick or easy money by itself would not fall within clause (c) of Section 2 of the Act and that making of such quick or easy money must depend upon any event or contingency relative or applicable to the enrollment of members into the scheme. It was held that to hold a person to be guilty of an offence under Section 4 read with Section 3 and 2(c) of the Act, two conditions must be satisfied, they are, 1) it must be proved that he is promoting or conducting a scheme for the making of quick or easy money; and 2) the chance or opportunity of making quick or easy money must be shown to depend upon an event or contingency relative or applicable to the enrollment of members into that scheme.

We shall now examine whether on the admitted facts and the material available on record, the scheme envisaged by petitioner No.1 attracts the aforementioned ingredients of clause (c) of Section 2 of the Act.

**The Scheme:**

The purported theme behind the scheme appears to be direct selling which means sale of products to the customers by the distributors of the company without there being any wholesaler or retailer. It is explained in the affidavit filed in support of the writ petition that a person becomes a distributor by purchasing a business kit at a cost of Rs.4,400/- comprising; a) Rs.2,600/- towards the products and other material (sales aid and literature) and b) Rs.1,800/- towards product literature and subscription fee. In this process, the distributors are provided with incentives. Annexure-7 (brochure) to the reply affidavit filed by the petitioner titled "Amway Sales and Marketing Plan in India" unfolds the entire scheme. It is explained therein that distributors can generate income in two ways, namely; 1) by earning retail sales profit, and 2) through performance incentive; that the distributors purchase products from Amway at distributors cost and then sell these products at higher price (not more than printed MRP) which is the retail sales profit. As

regards performance incentive, it is appropriate to extract the relevant portion of the brochure:

" **Performance Incentive:**

Your performance incentives are based on monthly calculation of your individual and group PV/BV. This incentive is based on a slab system that ranges from 3% to 21@ depending on your business volume. Your earnings would be proportionate to your efforts.

PV (Point Value) is a unit amount assigned to each product. It is an effort index, which puts emphasis on the units sold and not the selling price. Each month the PV is totaled in order to determine the performance incentive bracket. These brackets range from 3% to 21%.

BV (Business Volume) is a monetary figure assigned to each product. In order to calculate the Performance Incentive, the percentage amount determined by total PV is applied to the total BV for the month. The ratio of PV to BV in India is 1 PV = 45 BV.

BV (Business Volume is a monetary figure assigned to each product. In order to calculate the Performance Incentive, the percentage amount determined by total PV is applied to the total BV for the month. The ratio of PV to BV in India is 1 PV = 45 BV.

**Performance Incentive table**

| **If Total Montly PV is** | **BV is** | **Performance incentive is** |
|---|---|---|
| 10,000 | 4,50,000 | 21% of Your BV |
| 7,000 | 3,15,000 | 18% |
| 4,000 | 1,80,000 | 15% |
| 2,000 | 90,000 | 12% |
| 1,000 | 45,000 | 9% |
| 500 | 22,500 | 6% |
| 100 | 4,500 | 3% |

From the above reproduced information furnished by the petitioner it is clear that the performance incentive increases with the increase in the PV (points value) and BV (business volume). The brochure gave two examples as to how a distributor earns profits. The table given under example-1 is extracted below:

Example 1:

| A |
|---|
| Purchase products worth 100PV i.e. 4500 BV (Turnover-Rs.4500) |

**Income earned by A**
Retail Margin=20% o 4500 = Rs.900

*Commission*

Group Turnover = Rs.9000/-= 9000 BV = 200 PV
At 200 PV slab rate of Commission is 3%
Commission earned by A = 3% of 9000 minus commission paid to B (3% of 4500)
= 270-135=Rs.135
**Note:** This is the same as 3% on Rs.4500/-, which is the personal sales done by A. Maximum Earning, is on the Retail Margins something similar to a shop.

**Income earned by B**
Retail Margin=20% o 4500 = Rs.900

**Commission**
Group Turnover = Rs.4500/-= 4500 BV = 100 PV
(B has no group. Hence only his own turnover is counted.)
At 100 PV slab rate of commission is 3%.
Commission earned by B=3% of Rs.4,500/- =Rs.135/-

| B |
|---|
| Purchase products worth 100PV i.e. 4500 BV (Turnover-Rs.4500) |

At 100 PV slab rate of Commission is 3%
Commission earned by B = 3% of Rs.4500/- =Rs.135

The table given above shows that A who became the member and introduced B invested Rs.4,500/- on which 100 PV and 4,500 BV are credited to him. The income he earned consists of two components, i.e., 1) retail margin worked out at 20% of 4500 BV which comes to Rs.900/- and 2) commission comprising

group turnover of Rs.9,000/- valued at 9000 BV and 200 PV. It is significant to note here that in calculating the commission not only A's business turnover of Rs.4,500/- is taken into account but also the business turnover of Rs.4,500/- of B is included. Since PV earned by A by sponsoring B alone was at the lowest slab, namely 200, the lowest commission of 3% is applied by taking BV of both A and B into consideration. The amount of Rs.270 towards commission was distributed in equal proportions among A and B. A person by sponsoring more number of distributors will be credited with the business turnover of all other members of the group sponsored by him is illustrated in the table given under example-2 which is reproduced hereinbelow:

Example 2:

| A |
|---|
| Purchase products worth 100PV i.e. 4500 BV (Turnover-Rs.4500) |

**Income earned by A**
Retail Margin=20% of 4500 = Rs.900

***Commission***

Group Turnover = Rs.9000/-= 9000 BV = 200 PV
At 200 PV slab rate of Commission is 3%
Commission earned by A = 3% of 9000 minus commission paid to B (3% of 4500)
= 270-135=Rs.135
**Note:** This is the same as 3% on Rs.4500/-, which is the personal sales done by A. Maximum Earning, is on the Retail Margins something similar to a shop.
At 300 PV slab rate of Commission is 3%
Commission earned by B = 3% of Rs.13500/- Minus Commission earned by C,D & E
=Rs.405 – Rs.135 (C' Comm)-Rs.135 (D' Comm)- Rs.135 (E's Comm)
= Rs Zero
Hence B who has not done any business does not get any commission

| B |
|---|
| 'B' does no personal business i.e Zero PV and Zero BV |

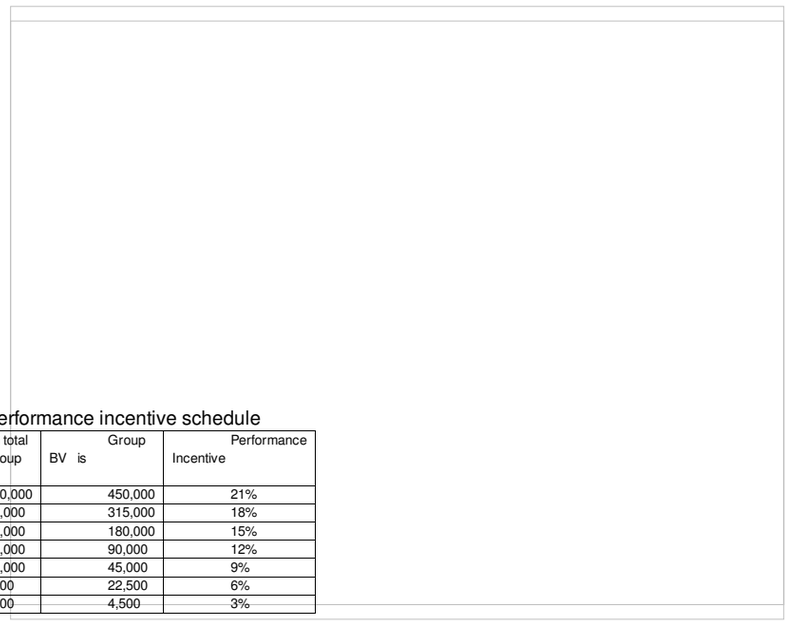
| C |
|---|
| C Purchases products worth 100 PV i.e, 4500 BV (Turnover-Rs.4500) |
| Income earned by C<br>Retail Margin=20% of 4500=Rs.900<br>**Commission**<br>Group Turnover=Rs.4500/-=<br>4500BV=100PV<br>(C has no group. Hence only his own turnover is counted<br>At 100 PV slab rate of commission is 3%<br>Commission earned by C=3% of Rs.4500= Rs.135 |

| D |
|---|
| D Purchases products worth 100 PV i.e., 4500 BV (Turnover-Rs.4500) |
| Income earned by D<br>Retail Margin=20% of 4500=Rs.900<br>**Commission**<br>Group Turnover=Rs.4500/-=<br>4500 BV=100PV<br>(D has no group. Hence only his own turnover is counted<br>At 100 PV slab rate of commission is 3%<br>Commission earned by D=3% of Rs.4500= Rs.135 |

| E |
|---|
| E Purchases products worth 100 PV i.e, 4500 BV (Turnover-Rs.4500) |
| **Income earned by E**<br>Retail Margin=20% of 4500=Rs.900<br>**Commission**<br>**Group Turnover=Rs.4500/-= 4500BV=100PV**<br>(E has no group. Hence only his own turnover is counted<br>At 100 PV slab rate of commission is 3%<br>Commission earned by E=3% of Rs.4500= Rs.135 |

In the above table, 'A' directly sponsored B and B in turn sponsored C, D, and E. While A's retail margin was calculated on the basis of the products sold by him, his commission was calculated on the total group turnover of B, C, D and E @ 18,000 BV = 400 PV which are worth Rs.18,000/-. As the sponsor distributor enrolls more members, his earning gets increased. This is evident from one of the downloaded copies of the brochure with the

title “Amway Success Seminars and Positrim Launch”, a copy of which is filed by the petitioner in W.P.No.25749 of 2006 and the authenticity of which is not disputed by the petitioners. For proper appreciation, the same is extracted hereinbelow:



Performance incentive schedule

| If total lonthly Group V is | Group BV is | Performance Incentive |
|---|---|---|
| 10,000 | 450,000 | 21% |
| 7,000 | 315,000 | 18% |
| 4,000 | 180,000 | 15% |
| 2,000 | 90,000 | 12% |
| 1,000 | 45,000 | 9% |
| 500 | 22,500 | 6% |
| 100 | 4,500 | 3% |

| | **ASSUMPTIONS** | **You Sell products 100 PV** | **You Sponsor 6 People each of whom do 100 PV** | **6 Distributors sponsor 4 people each, all whom do 100 PV** | **24 Distributor sponsor 3 people each , all of whom do 100 PV** |
|---|---|---|---|---|---|
| A | Personal PV | 100 | 100 | 100 | 100 |
| B | Group PV | 100 | 700 | 3100 | 10,300 |
| C | Performance % level | 3% | 6% | 12% | 21% |
| D | Group BV(B%45) | 4500 | 31,500 | 139,500 | 463,500 |
| E | Total Commission Generated(CxO) | 135 | 1890 | 16,740 | 97,335 |
| F | Commission Paid to downlines | -0x0%0PVX45BV | 810 6x3%x100PVx45BV | 8,100 6X6%X500PVX45BV | 41,310 6X9%X1700PVX45BV |
| G | Net Commission Earned(E-F) Rs. | 135 | 1080 | 8,640 | 56,025 |
| H | Retail Profit@20% x Personal sales Rs. | 900 | 900 | 900 | 900 |
| I | Gross Monthly Earning(G + H) Rs. | 1035 | 1980 | 9,540 | 56,925 |
| J | Gross Annual earnings(Ix12) Rs. | 12420 | 23760 | 114,480 | 683,100 |

In the above given diagram drawn to a 1-6-4-3 pattern, the first member sponsors six members. Each of the six members in turn sponsors four members and each of the twenty four members sponsors three members. Thus the strength of the total group becomes 103. At the minimum level of PV and BV, the profit margin and the commission the person heading the group, by taking his personal PV and BV gets is Rs.12,420/-, from the PV and BV of the six persons he sponsored he gets Rs.23,760/-, from the PV and BV of the 24 distributors who were sponsored by six distributors he gets Rs.1,14,480/- and from the PV and BV of 72 distributors whom the 24 distributors sponsored he will get
Rs.6,83,300/. This is the admitted position under the scheme.

As is evident from the contentions advanced on behalf of the petitioners as noted earlier, the petitioners have taken the stand that there is no quick or easy money involved in the scheme and that the money which the sponsor member gets does not depend on any event or contingency relative or applicable to the enrollment of the members into the scheme. But on a careful analysis of the true nature of the scheme as explained above, it is quite apparent that one of the components of the income earned by a sponsor member is the commission which is calculated not only on the personal PV of the sponsor member, but also from the PV earned by all the remaining 102 members falling within his group. There is, therefore, no gainsaying that a substantial part of the income which the first sponsor member of the group gets depends on the event or contingency relative or applicable to the enrollment of members into the scheme. This conclusion can be tested by a further analysis of the income figures given in the earlier paragraph.

Supposing the sponsor member at the top does not introduce any member and if he merely sells the products given to him, he gets an income of Rs.12,420/-. If he sponsors only six people and they in turn do not sponsor any member, then he will get an additional income of Rs.23,760/-. If those six members whom he sponsored again sponsor four members each, he will get a further income of Rs.1,14,480/- and if the 24 members sponsor three members each, he will get a further sum of Rs.6,83,300/-. Thus the money which the member at the top of the line gets depends upon the members whom he enrolls or the members enrolled by him enroll.

In Para 21 of the counter affidavit of respondent No.6 the example of Raja Naren is cited and the petitioner did not dispute the averment relating to the income he earned in a year. The said instance is illustrative of a person earning fabulous income without doing anything after he accomplishes his task of enrolling the required number of persons as members into the scheme.

From the aforementioned discussion, it is proved that the scheme provides for easy/quick money to its distributors. The first ingredient is thus satisfied.

Whether second ingredient is also satisfied or not is to be considered now. As seen above, each member on his enrollment pays Rs.4,400/-. Payment of Rs.4,400/- by a member on his enrollment and his future earnings through marketing/enrolling other members constitutes event or contingency relative to his enrollment. The distributor gets all this money as a consideration for promise made by the sponsor at the time of his enrollment. Thus as far as the member joining the scheme is concerned, both the ingredients of Section 2(c) of the Act, i.e., a) making of quick or easy money, and b) the chance or opportunity of making quick or easy money depending on an event or contingency relative or applicable to the enrollment of members into the scheme are satisfied.

Whether these two ingredients are satisfied qua the promoter of the scheme who is the 1st petitioner in this case is required to be examined now.

As pleaded by the petitioners themselves, out of Rs.4,400/- a substantial part, namely Rs.1,800/- is collected as subscription fee, license fee, business kit etc. To qualify for earning commission a member has to earn the minimum monthly PV of 50 which he will get by selling products worth Rs.2,000/-. Respondent No.6 in para-11(c) of his counter affidavit specifically pleaded as under:

> " To enable him to get the so called commission @ 3% every month, the ABO has to distribute/purchase/sell products worth Rs.2,000/- of "Amway" every month or else he will not be eligible to get any commission or continue as member in the scheme. Thus, each member is forced/induced/lured to purchase the products worth Rs.2,000/- every month to keep his chance of getting commission alive. Thus, "Amway" would automatically get a business of the quantum of Rs.1080/- crores (4,50,000 x 2,000 x 12(months) ) per annum which would yield an astronomical profit and it cannot but be stated as "easy/quick money" without any service to the distributors/members irrespective of whether they sell the products or not, though the company may conveniently refer it as "turnover by sale of products".

Significantly, this assertion made in the counter affidavit is not denied in the rejoinder of the petitioners. They have merely tried to explain the said allegation by offering certain justifications. The petitioners have not specifically denied that the first petitioner would get a sum of Rs.1,080/- crores by ensuring that each distributor maintains the minimum sales level. Even though the scheme per se does not stipulate that each distributor has to maintain the minimum required business level, prescription of minimum level of 50 PV to qualify for getting commission is sufficient inducement for the members to relentlessly strive for maintaining the PV level at or above the said minimum levels.

It is, thus, evident that the whole scheme is so ingeniously conceived that the inducement for aggressive enrollment of new members to earn more and more commission is inherent in the scheme. By holding out attractive commission on the business turned out by the downline members, the scheme provides for sufficient inducements for its members to chase for the new members in their hot pursuit to make quick/easy money. On the part of the promoter by pushing each member to achieve the minimum

sales worth Rs.2,000/- per month, (this sale includes enrollment of new members) he is assured of about 1000 crores per annum. All this squarely satisfy the description of quick/easy money. In addition to this, it is an admitted fact that each person in order to continue to be the distributor, shall pay renewal subscription fee of Rs.995/- per annum. In para-11(b) of the counter affidavit on the admitted number of distributors of 4,50,000 this amount is calculated at about Rs.45 crores per annum. These figures are not denied by the first petitioner in its rejoinder. The plea of the first petitioner that there is no compulsion that a member shall renew his distributorship looks to us to be specious. Once a person becomes a distributor in a scheme of this nature where the sops in the shape of commission are so luring, it would be very difficult for a member to withdraw from their membership to avoid payment of the annual renewal subscription fee.

From the whole analysis of the scheme and the way in which it is structured it is quite apparent that once a person gets into this scheme he will find it difficult to come out of the web and it becomes a vicious circle for him. In any event the petitioners have not specifically denied the turnover they are achieving and the income they are earning towards the initial enrollment of the distributors, the renewal subscription fee and the minimum sales being achieved by the distributors as alleged in the counter affidavit. By no means can it be said that the money which the first petitioner is earning is not the quick/easy money. By promising payment of commission on the business turned out by the down-line members sponsored either directly or indirectly by the up-line members (which constitutes an event or contingency relative to enrollment of members), the first petitioner is earning quick/easy money from its distributors, apart from ensuring its distributor earn quick/easy money. Thus the two ingredients are satisfied in the case of promoter too. We are, therefore, of the considered view that the scheme run by the petitioners squarely attracts the definition of "Money Circulation Scheme" as provided in Section 2(c) of the Act.

We may now deal with the petitioners' plea that the Government of India has not cancelled the scheme and, therefore, the respondents cannot prosecute them. From the record produced by the learned Advocate General and the Assistant Solicitor General, we find that none of the brochures as referred to and discussed above were placed before the Government of India. It is also clear from the record that the details of the scheme were not discussed by the committee which recommended for grant of approval to the scheme of the petitioners. As already noted above, in his letter dated 29.3.2003, the Secretary, Government of India, Ministry of Consumer Affairs, had clarified that the pyramid structured marketing scheme fall within the provisions of the Act. Therefore, the mere fact that the approval accorded by the Government of India has not been cancelled or withdrawn is not sufficient to stultify the investigation of the case registered against the petitioners. At any rate, whether the Government of India has taken any action or not or what view it takes on the schemes run by the 1st petitioner have no relevance in the adjudication of the issues raised by the petitioners in the cases before us.

The stage is now set for detailed consideration of the judgment of the Supreme Court in **Swapan Kumar Guha (1 supra)**. Both Sri B.Adinarayana Rao and Sri S.R.Ashok learned counsel appearing for the petitioners made strenuous efforts to convince us that the judgment in **Swapan Kumar Guha** (1 supra) applies to the present cases and therefore, the petitioners are entitled to the relief sought for in the writ petitions. In order to appreciate this contention, it will be appropriate to notice the facts in **Swapan Kumar Guha (1 supra)**. One Sanchita Investments is a registered partnership firm consisting of three partners with a share capital of Rs.7,000/-. In the year 1975 the said firm started its business in finance and investments. On a report given by the Commercial Tax Officer concerned, FIR was registered with the allegations that the firm had been offering 48% interest which was later reduced to 36 % and that therefore it was involved in money circulation scheme for making of quick or easy money. The firm and its partners filed two writ petitions in the Calcutta High Court under Article 226 of the Constitution of India for quashing the FIR. The High Court allowed the writ petition and quashed the FIR and the State of West Bengal filed appeal by Special Leave in the Supreme Court. After an in depth analysis of the definition of "money

circulation scheme" in Section 2(c) of the Act, the Supreme Court went into the question as to whether the FIR prima facie discloses an offence under Section 4 read with Section 3 of the Act in the light of the requirements of Section 2(c) of the Act. The Supreme Court mentioned the gist of the allegations in the leading opinion of A.N.Sen, J which is extracted below:

> "1. Sanchaita Investments is a partnership firm. Its partners are Sri Bihari Lal Murarka, Sri Shambhu Prasad Mukherjee and Sri Swapan Kumar Guha. The firm was started in or around 1975.
>
> 2. The firm had been offering fabulous interest at the rate of 48 per cent to its members until very recently. The rate of interest has of late been reduced to 36 per cent per annum.
>
> 3. Such high rates of interest were and are being paid even though the loan certificate receipts show rate of interest to be 12 per cent only.
>
> 4. Thus, the amount in excess of 12 per cent so paid clearly shows that 'money circulation scheme' is being promoted and conducted for the making of quick and/or easy money, prizes and/or gifts.
>
> 5. Prizes or gifts in cash are also being awarded to agents, promoters and members too.
>
> 6. In view of the above, Sarvashri Bihari Lal Murarka, Shambhu Prasad Mukherjee and Swapan Kumar Guha appear to have been carrying on the business in the trade name of 'sanchaita Investments' in prize chits and money circulation scheme in violation of S. 3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978."

In para-66 of the Judgment, it is held:

> " Whether an offence has been disclosed or riot must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the court has mainly to take into consideration the complaint or the F.. R. and the court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand, the court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual."

In para-68 it is held :

> "An analysis of these materials suggests that the firm is carrying on activities of accepting deposits from the members promising to pay them interest on such deposits at an agreed rate of 12 per cent as stipulated in the loan certificate; but, in fact, it has been paying interest to them at much higher rate of interest. The materials further indicate that the firm is making high-risk investments of the monies received from the depositors and has also been advancing monies to political parties."

In paras-69 and 70 of the Judgment the Supreme Court framed the questions which read:

> "69. The crux of question is whether these allegations disclose an offence under the Act namely, violation of S. 3 of the Act even if all these allegations are deemed to be correct.
>
> 70. The question whether these allegations disclose an offence under the Act and can be the basis for any suspicion that an offence under S. 3 of the Act has been committed or not, must necessarily depend on the provisions of the Act and its proper interpretation."

While holding that there was no allegation that Sanchita Chit Fund is conducting prize chit, the Supreme Court went on considering whether the business carried on by Sanchita Chit Funds attracted the definition of money circulation under Section 2(c) of the Act. In para-74, the requirements of money circulation scheme are mentioned which were already extracted in the earlier part of this judgment. In para-75 the Supreme Court held that the condition in the definition "on any event or contingency relative or applicable to the enrollment of members into the scheme whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions" qualifies both the provisions contained therein, namely; i) a scheme for making of quick/easy money, or ii) a scheme for receipt of any money or valuable thing as the consideration for a promise to pay money and not merely to the latter provision. In other words the Supreme Court held that in order to attract the definition of Section 2(c) of the Act it must be shown that not only that the scheme envisages making of quick/easy money but it

must also be shown that such quick/easy money is earned on any event or contingency relative or applicable to the enrollment of members into the scheme. Having so analyzed the definition of "money circulation scheme", the Supreme Court applied the said definition to the allegations made in the FIR and negatived the contention that the scheme attracted the provisions of Section 2(c) of the Act. The reasoning of the Supreme Court in coming to the said conclusion is discernible from para-79, which is extracted hereunder:

> "79. Judged from the point of view of the firm, there is nothing to indicate that the firm makes any investment in consultation with its depositors. **The materials only indicate that the firm indulges in high-risk investments and also advances monies to political parties. Neither of these acts appears to be illegal and they do not go to show that the firm makes easy or quick money**. It is no doubt true that the materials go to show that the firm pays a larger amount by way of interest than payable on the basis of the rates stipulated in the loan certificate and the firm pays the excess amount of interest to the depositors in a clandestine manner. The clandestine manner of payment of interest in excess of the stipulated rate does not, in any way, indicate the existence of any scheme for making quick or easy money. It is again to be pointed out that in any event the materials do not indicate that the payment of interest by the firm in excess of the stipulated rate is in any way dependent on any event or contingency. **There is nothing to indicate any scheme for the receipt of the money by the firm from its depositors as a consideration for promise to pay the interest in excess of the stipulated rate and also to pay back principal amount on the expiry of the term dependent in any way on any event or contingency relative or applicable to the enrolment of new depositors, considering the depositors to be members. I am, therefore, of the opinion, that not any of the requirements of a money circulation scheme is satisfied in the instant case.** As there is no money circulation scheme, there can be no scheme as contemplated in the Act in view of the definition of 'scheme' in the Rules. **The material, appear to disclose violation of revenue laws. They, however, do not disclose any violation of the Act. The materials do not disclose that the firm is promoting or conducting money circulation scheme and the question, therefore, of any violation of S. 3 of the Act does not arise in the instant case.** As the firm is not conducting or promoting a money circulation scheme, and as no case is made that the firm is conducting or promoting a chit fund, the Act cannot be said to be applicable to the firm. In my opinion, it does not become necessary to refer to the Rules for coming to the conclusion. I may, however, add that a consideration of the Rules also clearly lends support to the conclusion to which I have come. I find that the learned Judge has very carefully and elaborately considered all the aspects in his judgment and in the course of elaborate discussion, he has noted all the contentions raised by the parties and has carefully considered them. **The learned Judge on a careful consideration of all aspects and on a proper interpretation of the Act, has expressed the view that no offence under the Act is' disclosed against the firm which does not conduct or promote money circulation scheme or a chit fund and the Act has no application to the firm.** It may also be noted that the learned Judge has also in his judgment referred to the report of the Reserve Bank and the opinion of the learned Advocate General of the State which lent support to the view taken by the learned Judge. The view expressed by the learned Judge that the materials do not disclose that the firm is promoting or conducting a money circulation scheme and the Act has, therefore, no application to the firm meets with my approval and I agree with the same." (emphasis added)

From the above analysis of the scheme, and the allegations in the FIR relating to the scheme carried on by Sanchita Chit Funds, the Supreme Court found that the allegations contained in the FIR and the materials produced before the court do not disclose that the firm was conducting or promoting money circulation scheme to attract the provisions of Section 3 of the Act. As the facts in the said case bear no similarity whatever with the facts involved in the present case, the said judgment is of no help at all to the petitioners to claim relief.

Unlike in the case of **Swapan Kumar Guha (1 supra)**, though the petitioners herein have not specifically sought for quashing of FIR and it is stated in para-27 of the writ affidavit that the petitioners are reserving their right to initiate appropriate action for annulment of the action of respondents 5 and 6 in registering the case against the petitioners, in reality granting of relief claimed in these writ petitions would virtually have the effect of quashing the criminal proceedings initiated against the 1st petitioner. Therefore it is necessary for us to consider the contents of the complaint in the light of the law laid down by the Supreme Court on the scope of interference by the High Courts in criminal investigation/trial while exercising power under Article 226 of the Constitution or Section 482 of the Code of Criminal Procedure.

The complaint submitted to the CID Police, Hyderabad in this case is exhaustive. The complainant graphically described how the scheme run by petitioner No.1 through the other petitioners and various distributors in the country constitutes money circulation scheme. The gist of the complaint has already been extracted herein before. From the conclusion arrived at by us on the analysis of the admitted material available before us concerning the scheme, we have no doubt whatsoever that if the allegations contained in the report of C.No.1474/C-27/CID/2006 dated 24.9.2006 are taken on their face value they make out an offence punishable under the provisions of Sections 4, 5 and 6 of the Act.

Law with regard to interference with the criminal investigation and quashing of criminal proceedings is well settled. In **State of Haryana & Others Vs. Bhajan Lal & Others**[2] the Supreme Court laid down broad guidelines mentioned to be illustrative rather than exhaustive for the High Courts to exercise their extraordinary powers under Article 226 of the Constitution of India or inherent powers under Section 482 of the Code of Criminal Procedure either to prevent abuse of the process of court or otherwise to secure the ends of justice. They are as follows:

> " 1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> 2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S. 156 (1) of the Code except under an order of a Magistrate within the purview of S. 155 (2) of the Code.
>
> 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> 4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155 (2) of the Code.
>
> 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> 7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In **State of Bihar Vs. P.P.Sharma, IAS & Another**[3] the Supreme Court reviewed the case law on this aspect including the judgment of Supreme Court in **Swapan Kumar Guha's** case (1 supra). While referring to the said judgment on which reliance was placed on behalf of the accused for the quashing of the criminal proceedings, Ramaswamy, J observed as under:

> " The decision of this Court, strongly relied on namely, State of West Bengal v. Swaran Kumar, (1982) 3 SCR 121, is of no assistance to the respondents. In that case it was found that the First Information Report did not disclose the facts constituting the offence."

In **State of Orissa v. Saroj Kumar Sahoo**[4] the Supreme Court reviewed various judicial precedents and laid down the following propositions:

> "1) The exercise of power under Section 482 CrPC is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise.

2) While exercising the powers under Section 482 Cr.P.C., the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

3) The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which such power can be exercised can be laid down."

In **A.V. Mohan Rao v. M. Kishan Rao**[5] the Supreme Court considered the correctness of order passed by this Court refusing to quash the summons issued against the appellants by the Special Judge for Economic Offences, Hyderabad. The facts of that case shows that respondent No.1 filed a complaint in the Court of Special Judge, Economic Offences at Hyderabad with the allegation that accused persons by making false, deceptive and misleading statements and by suppressing facts induced various persons to pay them money for purchase of shares of the Power Company; raised millions of dollars from Non-Resident Indians (NRIs); siphoned of the money into bogus companies exclusively owned by them and purchased shares of the Power Company in India in the names of bogus offshore companies owned and controlled by them. According to the complainant, all this came to his notice when some of the prospective NRI investors made correspondence with the Power Company demanding share certificates for which they had paid substantial amounts to the accused. The complainant alleged that the accused had committed fraud on the Power Company in whose name they collected money and invested the same in their own companies. The Special Judge for Economic Offences, Hyderabad issued summons to the accused persons requiring them to appear before the Court. On receipt of the summons, the appellants filed petition under Section 482 Cr.P.C. This Court refused to quash the proceedings. While approving the order of the High Court, the Supreme Court referred to the earlier judgments in **State of Bihar v. Murad Ali Khan**[6] , **State of Haryana v. Bhajan Lal** (supra), **Mahavir Prasad Gupta v. State of National Capital Territory of Delhi**[7] and held:

"Reading of the complaint petition and the materials produced by the complainant with it in the light of provisions in the aforementioned sections, it cannot be said that the allegations made in the complaint taken in entirety do not make out, even prima facie, any of the offences alleged in the complaint petition. We refrain from discussing the merits of the case further since any observation in that regard may affect one party or the other. The allegations made are serious in nature and relate to the Power Company registered under the Act having its head office in this country. Whether the appellants were or were not citizens of India at the time of commission of the offences alleged and whether the offences alleged were or were not committed in this country, are questions to be considered on the basis of the evidence to be placed before the Court at the trial of the case. The questions raised are of involved nature, determination of which requires enquiry into facts. Such questions cannot be considered at the preliminary stage for the purpose of quashing the complaint and the proceeding initiated on its basis."

In **State of Karnataka v. M.Devendrappa**[8] (supra), the Supreme Court referred to some of the earlier judgments and laid down the following propositions:

"1) It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark

upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should not be exercised to stifle a legitimate prosecution.

2) The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Court must be careful to see that its decision in exercise of this power is based on sound principles. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.

3) In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

4) When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegation of mala fides against the informant is of no consequence and cannot by itself be the basis for quashing the proceedings."

In **State of Maharashtra v. Ishwar Piraji Kalpatri**[9] the Supreme Court held that if a prima facie case is made out on the basis of allegations made in the complaint then the High Court cannot quash the proceedings on the ground of mala fides or animus of the complainant or prosecution.

By applying the principles set out in the aforementioned judgments, we hold that there is no warrant for us to restrain the investigating agency from proceeding with the criminal case.

Sri B.Adinarayana Rao next contended that even assuming that the police are satisfied that the petitioners are indulging in money circulation scheme, they cannot high- handedly interfere with the business of the petitioners till the criminal court after a full fledged trial holds the petitioners guilty of the offence alleged against them. We have carefully considered this submission of the learned counsel. It is a well settled principle of criminal jurisprudence that no person shall be presumed to be guilty until his guilt is proved, but we are unable to accept the broad submissions of the learned counsel for the petitioners that till the conclusion of the criminal case the police have no power to interfere with the business activities of the petitioners. Section 7 of the Act empowers the police officer not below the rank of an officer in charge of a police station to exercise all or any of the powers enumerated therein. It is relevant to extract the said provision which reads as under:

"**7.Power to enter, search and seize**:- (1) It shall be lawful for any police officer not below the rank of an officer-in-charge of a police station,-

(a) to enter, if necessary by force, whether by day or night with such assistance as he considers necessary, any premises, which he has reason to suspect, are being used for purposes connected with the promotion or conduct of any prize chit or money circulation scheme in contravention of the provisions of this

Act;

(b) to search the said premises and the persons whom he may find therein,

(c) to take into custody and produce before any Judicial Magistrate all such persons as are concerned or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been concerned with the use of the said premises for purposes connected with, or with the promotion or conduct of, any such prize chit or money circulation scheme as aforesaid;

(d) to seize all things found in the said premises which are intended to be used. or reasonably suspected to have been used, in connection with any such prize chit or money circulation scheme as aforesaid.

(2) Any officer authorized by the State Government in this behalf may-

(a) at all reasonable times, enter into and search any premises which he has reason to suspect, are being used for the purposes connected with or conduct of, any prize chit or money circulation scheme in contravention of the provisions of this Act:

(b) examine any person having the control of, or employed in connection with any such prize chit or money circulation scheme:

(c) order the production of any documents, books or records in the possession or power of any person having the control of. or employed in connection with. Any such prize chit or money circulation scheme; and

(d) inspect and seize any register, books of accounts, documents or any other literature found in the said premises.

(3) All searches under this section shall be made in accordance with the provisions of Code of Criminal Procedure, 1973."

In para-28 of the affidavit filed in support of the writ petition it is averred that after registering the crime respondents 5 and 6 have conducted simultaneous raids on the petitioners' branches at 9 centers in Andhra Pradesh and sealed the various office premises of the petitioners. The action complained of in the writ petition falls well within the powers of the police vested in them by Section 7 of the Act. However, we would like to observe that if in the process of exercising such powers the police exceed their powers, it is always open to the petitioners to approach the competent court of law for redressal of their grievance.

For the reasons aforementioned, the writ petitions are liable to be dismissed.

In the result, the two writ petitions i.e., Writ Petition Nos.20470 and 20471 of 2006 are dismissed.

As regards Writ Petition Nos. 24799 of 2000, 7515 of 2003, 22914, 22915, 22916, 22913, 21128, 20616, 23737, 26149 of 2006, 3202, 2462, 9397 and 9398 of 2007, which were listed for hearing along with these petitions, it is appropriate to observe that the Court did not have the benefit of the arguments of the learned counsel appearing for the petitioners. It is, therefore, appropriate that all these petitions be listed for hearing on 24.8.2007.

**C.V. NAGARJUNA REDDY, J**

Date:19.7.2007

**G.S.SINGHVI, CJ**

Mdaa/Es

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[1] (1982) 1 SCC 561
[2] 1992 Suppl (1) SCC 335
[3] 1992 Supp (1) SCC 222

[4] (2005) 13 SCC 540
[5] (2002) 6 SCC 174

[6] (1988) 4 SCC 655
[7] (2000) 8 SCC 115
[8] (2002) 3 SCC 89
[9] (1996) 1 SCC 542